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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

DEC - 1 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local	)	CC Docket No. 94-1
Exchange Carriers	)	
	)	
Interexchange Carrier Purchases of Switched	)	
Access Services Offered By Competitive	)	CCB/CPD File No. 98-63
Exchange Carriers	)	
	)	
Petition of US West Communications, Inc.	)	
For Forbearance from Regulation as a	)	CC Docket No. 98-157
Carrier in the Phoenix, Arizona MSA	)	

**OPPOSITION**

BellSouth Corporation ("BellSouth"), on behalf of itself and its subsidiaries, hereby submits its Opposition to the Petition of Network Access Solutions Corporation ("NAS") for Reconsideration of the Commission's *Fifth Report and Order* in the above referenced proceeding.<sup>1</sup>

1. NAS requests that the Commission reconsider and revise its Phase I triggers for dedicated transmission services in two respects. First, NAS contends that transmission services should be divided into two categories, DS3 capacity services and low capacity services, *i.e.*, services that are below DS3 capacity, with separate triggers applying to each category. Next, NAS argues that the collocation triggers for each category of transmission service be raised from

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<sup>1</sup> *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, and Petition of US West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in Phoenix, Arizona MSA, CC Docket Nos.*

the current 15 percent level to 30 percent for DS3 services and 50 percent for low capacity services.

2. In support of its petition, NAS claims that the current Phase I triggers are arbitrary and unsupported by a rational explanation. As explained below, NAS' criticisms of the Commission's determinations are unfounded.

3. The approach adopted by the Commission in the *Fifth R&O*, to reduce and eliminate unnecessary regulation, represents a balanced approach designed to achieve specific Commission objectives. As the Commission explained, the collocation-based trigger for granting pricing flexibility for dedicated transmission services balanced two of its goals. First, to avoid excessive administrative burdens, it created a bright-line test that was easily verifiable. Next, the test enabled the Commission to be certain that there is irreversible investment sufficient to discourage exclusionary pricing behavior.<sup>2</sup> These goals fall squarely within the Commission's statutory authority. The Commission fully explained the manner in which collocation triggers achieve its goals.

4. The Commission has had considerable experience with regard to collocation. Prior to the enactment of the Telecommunications Act of 1996, the Commission adopted expanded interconnection rules requiring incumbent local exchange carriers ("LECs") to permit competitors to terminate their transmission facilities at LEC wire centers. During the long course of this proceeding, the Commission has received information regarding quickness with

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96-262, 94-1, 98-63, and 98-157, *Fifth Report and Order*, FCC 99-206, released August 27, 1999 ("*Fifth R&O*").

<sup>2</sup> *Fifth R&O* ¶ 78.

which competitors installed alternative fiber networks, not only in major metropolitan markets but also in secondary markets as well.

5. The rules adopted to implement the Telecommunications Act's collocation requirement augmented the Commission's existing expanded interconnection policies. As the Commission observed, its most recent actions will facilitate the "development of competition in the advanced services market, while promoting competition in the traditional circuit-switched voice market" by making available "shared caged and cageless collocation arrangements" and permitting the collocation of "all equipment used for interconnection and/or access to UNEs."<sup>3</sup> The record establishes that operational collocation requirements evidence a financial commitment by competitors; that competitors first invest in trunk-side facilities that carry traffic to interexchange carrier POPs and can use its investment to serve a number of customers; and that the competitive facilities cannot easily be removed.<sup>4</sup>

6. Based on the record evidence, the Commission properly concluded that collocation arrangements "almost always implied that a competitor has installed transmission facilities to compete with the incumbent."<sup>5</sup> To take into account that, in the future, the provision of advanced services, such as DSL, may result in some competitors collocating in many wire centers throughout an MSA to gain access to an incumbent's copper loops, but not to compete for transport, the Commission added the additional requirement that incumbent LECs show that

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<sup>3</sup> *Id.* at ¶ 81.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at ¶ 82.

at least one competitor relies on transport facilities by a transport provider other than the incumbent in each wire center.<sup>6</sup>

7. The Commission's conclusions can hardly be characterized as irrational. To the contrary, the Commission fully recognized its rules would not require the presence of competitive facilities in every wire center before a LEC could receive pricing flexibility. Such a competitive presence, however, was not necessary to afford the incumbent LEC additional pricing flexibility. Indeed, all the Commission's rules do is adjust the degree of Commission intervention in incumbent LEC operations. The theoretical harm of exclusionary behavior in wire centers where competitors were not present, such as that hypothesized in NAS' petition, was specifically considered by the Commission. The Commission found that sufficient remedies exist, including complaints under Section 208, and that additional protections against such theoretical harms are unnecessary.<sup>7</sup> Thus, the putative reason advanced by NAS for modifying the triggers, the possibility of exclusionary practices, was fully considered and addressed by the Commission. NAS offers nothing to contradict the Commission or show that the Commission erred in its decision.

8. NAS' claim that the Commission should establish separate triggers for low capacity services and DS3 services simply cannot withstand scrutiny. The only basis offered by NAS for its position is the unsupported assertion that low capacity services share more characteristics with end user channel terminations than that of DS3 services and that providers of such services are more widely collocated given that low capacity services are more widely used by small

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at ¶ 83.

businesses, ISPs and small CLECs. This assertion, without more, is insufficient to displace the Commission's conclusion, which as noted above, reflects record evidence that shows that competitors' investment decisions reflect trunk-side/line-side distinctions. As such, the Commission's rules rationally take such distinctions into account by establishing different and higher triggers for channel terminations to end users as compared to all other transmission service elements. Indeed, NAS argues that the reason for differentiating low capacity services is that they are used by ISPs and small businesses. ISPs and small businesses, however, are end users. Thus, the 50 percent collocation trigger that NAS argues should be adopted is in fact already reflected in the rules that apply to end user channel terminations. Thus, NAS' argument rather than showing that the Commission erred, instead, confirms the Commission's determination.

9. No more compelling is NAS' claim that the 15 percent collocation trigger is incorrect. First, NAS argues that the trigger is too low because it is less than the trigger incumbent LECs have requested. NAS specifically refers to a Bell Atlantic petition for forbearance wherein Bell Atlantic sought forbearance where at least 75 percent of the demand in a state is subject to a competitive alternative. First, the pricing flexibility that is obtained by meeting the 15 percent trigger is significantly less than the regulatory forbearance sought by Bell Atlantic which among other things included no longer being subject to the Part 69 access charge rules. Even with pricing flexibility, incumbent LECs would still be subject to Part 69 rules and would be required to provide service on a generally available tariffed-basis. Accordingly, the Bell Atlantic forbearance petition hardly constitutes support for the proposition that Commission's decision is incorrect.

10. Notwithstanding that the Bell Atlantic petition does not establish the minimum competitive trigger, NAS attempts to use Bell Atlantic data to establish the general proposition that to meet the 75 percent demand threshold, collocation in typical urban areas would have to exceed 15 percent. Indeed, NAS argues that Baltimore, where collocation in 32 percent of the wire centers accounts for 78 percent of the demand, is representative of a typical MSA. There is simply no support for NAS' conclusion that Baltimore is a typical MSA. Further, NAS' argument fails to recognize that the trigger selected by the Commission reflects consideration of circumstances that cut across all price cap LECs, not just Bell Atlantic. Data that BellSouth has been gathering to seek pricing flexibility shows that the Commission's conclusion was well founded. For example, in the Birmingham, Alabama MSA collocation in 18.2 percent of the wire centers accounts for 83 percent of the demand; in the Gainesville, Florida MSA, collocation in 16.7 percent of the wire centers accounts for 95 percent of the demand; in the New Orleans, Louisiana MSA, collocation in 10.7 percent of the wire centers accounts for 72 percent of demand; in the Asheville, North Carolina MSA, collocation in 11.1 percent of the wire centers accounts for 80 percent of the demand; and in the Atlanta, Georgia MSA, collocation in 26 percent of the wire centers accounts for 78 percent of the demand. These data not only provide *ex post* support for the Commission's decision but also demonstrate that NAS' leap of logic that Baltimore is a representative MSA is simply wrong and irrational.

11. Finally, NAS is incorrect that the Commission's selection of a 15 percent trigger is arbitrary and unsupported. The Commission's determination reflects a careful review of all the information and data that was provided during the course of the rulemaking. As the Commission made clear, there was record evidence submitted by price cap incumbent LECs that proposed

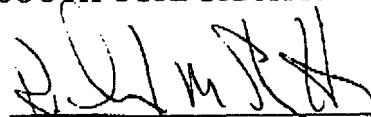
regulatory relief based on triggers tied to the percent of wire centers in which competitors were collocated.<sup>8</sup> As noted above, the Commission selected collocation as the trigger for pricing flexibility because it achieved Commission objectives. The Commission, based on its expert judgment, adjusted the LEC proposals to reflect that collocation understates the extent of competitive facilities within a wire center and that the relief granted is not as extensive as that proposed by the LECs. Contrary to NAS' petition, the 15 percent trigger reflects a full and thorough evaluation of the record and a proper exercise of the Commission's expert judgment.

12. Accordingly, for the reasons stated above, the Commission should deny NAS' petition.

Respectfully submitted,

BELLSOUTH CORPORATION

By:



M. Robert Sutherland  
Richard M. Sbaratta

Its Attorneys

Suite 1700  
1155 Peachtree Street, N. E.  
Atlanta, Georgia 30309-3610  
(404) 249-3386

Date: December 1, 1999

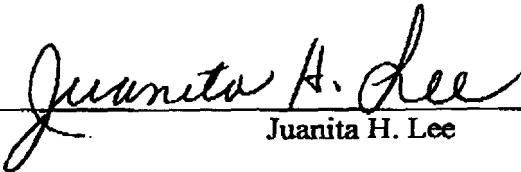
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<sup>8</sup>

*Id.* at ¶ 85.

**CERTIFICATE OF SERVICE**

I do hereby certify that I have this 1<sup>st</sup> day of December 1999 served the following parties to this action with a copy of the foregoing OPPOSITION by hand delivery or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.

  
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Juanita H. Lee



Service List CC Docket Nos. 96-262, 94-1, 98-157 and CCB/CPD File No. 98-63

Lawrence E. Sarjeant  
Linda L. Kent  
Keith Townsend  
John W. Hunter  
Julie E. Rones  
UNITED STATES TELEPHONE ASSOCIATION  
1401 H Street, NW, Suite 600  
Washington, DC 20005

Edward D. Young, III  
Michael E. Glover  
Edward Shakin  
Joseph Dibella  
BELL ATLANTIC  
1320 North Court House Road  
8<sup>th</sup> Floor  
Arlington, VA 22201

Mark L. Evans  
Geoffrey M. Klineberg  
BELL ATLANTIC  
Kellogg, Nuber, Hansen  
Todd & Evans, P.L.L.C.  
1301 K Street, N. W.  
Suite 1000 West  
Washington, DC 20005

Gail L. Polivy  
GTE SERVICE CORPORATION  
1850 M Street, N. W.  
Suite 1200  
Washington, DC 20036

Thomas R. Parker  
GTE SERVICE CORPORATION  
600 Hidden Ridge, MS HQ-E03J43  
P. O. Box 152092  
Irving, Texas 75015-2092

Gregory J. Vogt  
Daniel J. Smith  
GTE SERVICE CORPORATION  
Wiley, Rein & Fielding  
1776 K Street, N. W.  
Washington, DC 20006-2304

\*Magalie Roman Salas  
Office of the Secretary  
FEDERAL COMMUNICATIONS COMMISSION  
The Portals, 445 Twelfth Street, S. W.  
Room TW-A325  
Washington, DC 20554

\*International Transcription Service  
The Portals, 445 Twelfth Street, SW  
Suite CY-B400  
Washington, DC 20554

Rodney L. Joyce  
J. Thomas Nolan  
NETWORK ACCESS SOLUTIONS CORPORATION  
Shook, Hardy & Bacon LLP  
600 14<sup>th</sup> Street, N.W., Suite 800  
Washington, DC 20005-2004

**\* VIA HAND DELIVERY**